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NORTHERN DISTRICT OF CALIFORNIA

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Matthew Franklin Jaksa (CA State Bar No. 248072)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: matt.jaksa@hro.com

Attorneys for Plaintiffs,
ELEKTRA ENTERTAINMENT GROUP
INC.; UMG RECORDINGS, INC.; and
SONY BMG MUSIC ENTERTAINMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C 07 6027

EDL

ELEKTRA ENTERTAINMENT GROUP INC.,
a Delaware corporation; UMG RECORDINGS,
INC., a Delaware corporation; and SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO.

**EX PARTE APPLICATION FOR LEAVE
TO TAKE IMMEDIATE DISCOVERY**

1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26
2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum
3 of Law, hereby apply *ex parte* for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 1. Plaintiffs, record companies who own the copyrights in the most popular sound
6 recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a
7 third party Internet Service Provider ("ISP") to determine the true identity of Defendant, who is
8 being sued for direct copyright infringement.¹

9 2. As alleged in the complaint, Defendant, without authorization, used an online media
10 distribution system to download Plaintiffs' copyrighted works and/or distribute copyrighted works to
11 the public. Although Plaintiffs do not know the true name of Defendant, Plaintiffs have identified
12 Defendant by a unique Internet Protocol ("IP") address assigned to Defendant on the date and time
13 of Defendant's infringing activity.

14 3. Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that
15 identify Defendant's true name, current (and permanent) address and telephone number, e-mail
16 address, and Media Access Control ("MAC") address. Without this information, Plaintiffs cannot
17 identify Defendant or pursue their lawsuit to protect their copyrighted works from repeated
18 infringement.

19 4. Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a
20 Rule 26(f) conference where there are no known defendants with whom to confer.

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26 ¹ Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to personally serve
27 Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of Court pursuant to Fed. R. Civ. P.
28 5(b)(2)(C) ("If the person served has no known address, [service under Rule 5(a) is made by] leaving a copy with the
clerk of the court.") and will serve Defendant's ISP with a copy of this motion. Additionally, if the Court grants this
motion, Plaintiffs will ask the ISP to notify the Defendants of the subpoena and provide Defendant with an opportunity
to object.

1 WHEREFORE, Plaintiffs apply *ex parte* for an Order permitting Plaintiffs to conduct
2 the foregoing requested discovery immediately.

3 Dated: November 29, 2007

HOLME ROBERTS & OWEN LLP

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5 By: 

MATTHEW FRANKLIN JAKSA
Attorney for Plaintiffs
ELEKTRA ENTERTAINMENT GROUP
INC.; UMG RECORDINGS, INC.; and
SONY BMG MUSIC
ENTERTAINMENT